In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 6546 of 2004

Date of Decision: 17.11.2006

Jasbir Kaur

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Ms. Sangeeta Dhanda, Advocate
for the petitioner.

Mr. B.S. Chahal, AAG, Punjab
for the respondents.

...

J.S. Khehar, J. (Oral).

The petitioner was appointed as Auxiliary Nurse Midwife (hereinafter referred to as A.N.M) for a period of six months, and she joined her services as such, on 11.3.1969. It is the case of the petitioner, that she continued to render her services uninterruptedly, without any break, as a consequence of regular extensions granted to her from time to time, whereupon, her services were eventually regularised on 3.1.1974, against the post of A.N.M.

The services of the petitioner as A.N.M, consequent upon her entry into service on 11.3.1969, came to be annulled as a consequence of the passing of an order dated 30.9.1975. The aforestated order is relevant for

the adjudication of the controversy raised before us. Relevant portion whereof is, accordingly, being extracted hereunder:-

> "To
>
> Smt. Jasbir Kaur, A.N.M.,
> P.H.C., Muzaffarpur (Jullundur).
>
> Subject: Termination of services.
>
> ....
>
> Your services are no longer required in this Department. As such, you are hereby served with one month's notice from the date of issue of this memo. On the expiry of one month's period, your services will automatically stand terminated."

Consequent upon the passing of the order dated 30.9.1975, the petitioner was relieved from her employment w.e.f. 1.11.1975.

The petitioner again applied for the post of A.N.M, whereupon, consequent upon the recommendation of her name by the Subordinate Services Selection Board, Punjab, she was appointed against the post of A.N.M. by an order dated 4.4.1977. The petitioner assumed here duties as such w.e.f. 12.4.1977. On having rendered continuous service thereafter, the petitioner attained the age of superannuation on 31.1.2003. At the time of retirement, the petitioner was holding the post of Lady Health Visitor (Multi-purpose Supervisor – Female).

The solitary issue that arises for consideration before this Court is, whether the service rendered by the petitioner w.e.f. 11.3.1969 till 31.10.1975 i.e. preceding the interruption in her service from 1.10.1975 to 11.4.1977, should be taken into consideration as qualifying service

alongwith the service rendered by the petitioner on her reappointment w.e.f. 12.4.1977 for calculating her retiral benefits ? In order to substantiate her claim that the service rendered by her before the aforesaid interruption in service, has to be taken into consideration as qualifying service, learned counsel for the petitioner has relied on Rule 4.23 of the Punjab Civil Services Rules, Volume-II. The aforesaid rule is being extracted hereunder:-

> "4.23. In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered under State government shall be treated as automatically condoned, and the pre-interruption service shall be treated as qualifying service for pension purposes, except where the interruption has been caused by resignation, dismissal or removal from service or due to participation in a strike, but the period of interruption itself shall, under no circumstances be reckoned as qualifying service for pension purposes."

A perusal of the aforesaid rule clearly reveals, that a spell of interruption in service, separating two spells of employment rendered by a government employee, would be deemed to have been automatically condoned, so as to be treated as qualifying service, except in three cases of interruption, namely, when the interruption has been caused by way of resignation at the behest of the employee himself, or when the interruption has been caused as a consequence of dismissal or removal from service, and thirdly, when the interruption has been caused as a consequence of participation in a strike.

While it is the contention of the learned counsel for the petitioner, that the interruption in service of the petitioner was for none of the reasons referred to above, it is the contention of the learned counsel for the respondents, that the services of the petitioner were terminated by an order dated 30.9.1975 (already extracted hereinabove), and as such, Rule 4.23 of the Punjab Civil Services Rules, Volume-II, would be inapplicable to the controversy in hand.

In so far as, the submissions of the rival parties are concerned, it is obvious, that the interruption in the instant case, does not fall in the first exception, namely, by way of resignation at the hands of the petitioner. It is also obvious, that the interruption is not on account of the third exception, namely, due to participation in a strike. The only issue that needs to be adjudicated upon, therefore is, whether interruption in the instant case falls in the second exception, namely, that it was on account of dismissal or removal from the employment of the respondents.

Dismissal and removal from service are punishments expressed in the provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as the 1970 Rules). An order of dismissal or removal from service can only be passed after the procedure envisaged under the 1970 Rules, is followed, and the employee has been found guilty of proven misconduct. The order by which the services of the petitioner were terminated, dated 30.9.1975, has been extracted hereinabove. It reveals, that the services of the petitioner were being terminated on account of the fact, that they were no longer required. It is, therefore apparent, that the services of the petitioner were not terminated on

account of any misconduct, or as a matter of punishment under the Punjab Civil Services (Punishment and Appeal) Rules, 1970. And as such, we are of the view, that the second exception envisaged under Rule 4.23 of the Punjab Civil Services Rules, Volume-II, where the interruption is on account of dismissal or removal from service, would be inapplicable to the controversy in hand.

Despite our conclusion hereinabove, it would be pertinent to mention, that the respondents have depicted another reason for terminating the services of the petitioner in the preliminary objection. Relevant part of the preliminary objection, is being extracted hereunder:-

> "That the petitioner was legally terminated from the service due to 0% performance of the Family Planning during the service. The petitioner was served with one month's notice by the department before terminating her services."

It is not possible for us to accept the aforesaid basis, now disclosed by the respondents, for having terminated the services of the petitioner. Had the instant basis been the reason actuating the passing of the order dated 30.9.1975, the same would have been in clear violation of the mandate of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, as well as, Article 311 of the Constitution of India, inasmuch as, the procedure envisaged under the aforesaid Rules, as also, under Article 311 of the Constitution of India, would have been a pre-requisite before such an order could have been passed on the basis of the allegations depicted in the preliminary objection. It is, therefore, not possible for us to accept, that the petitioner was either dismissed or removed from service.

For the reasons recorded above, the instant writ petitioner is allowed. The claim of the petitioner, in our view, is clearly covered under Rule 4.23 of the Punjab Civil Services Rules, Volume-II. The petitioner shall, accordingly, be entitled to count as qualifying service the employment rendered by her from 11.3.1969 to 31.10.1975 in conjunction with the service rendered by her from 12.4.1977 till her retirement on superannuation. The respondents are, accordingly, directed to calculate the retiral benefits of the petitioner in terms of Rule 4.23 of the Punjab Civil Services Rules, Volume-II, within two months from today, and release the payment due to her, within a further period of two weeks.

Disposed of accordingly.

A copy of the order be given to the learned counsel for the respondents, dasti on payment of usual charges.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

17.11.2006
sk.